

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

AMHERST EXEMPTED VILLAGE)	CASE NO. 1:07-cv-00920
SCHOOL DISTRICT BOARD OF)	
EDUCATION,)	JUDGE DONALD C. NUGENT
)	
Plaintiff,)	MAGISTRATE JUDGE
)	NANCY A. VECCHIARELLI
v.)	
)	
ALICE CALABRESE, <i>et al.</i> ,)	
)	
Defendants.)	ORDER

On February 13, 2008, Plaintiff Amherst Exempted Village School District Board of Education (“Amherst”) filed a “Notice of Voluntary Dismissal its Claims Against Alice Calabrese and Angelo Calabrese Only” pursuant to Federal Rule of Civil Procedure 41(a)(1) (“Rule 41(a)(1)”). (Doc. No. 72.) By its very terms, Rule 41(a)(1) only allows a plaintiff to dismiss an action without a court order by filing “(i) a notice of dismissal *before* the opposing party serves either an *answer* or a motion for summary judgment; *or* (ii) a *stipulation* of dismissal signed by *all parties* who have appeared.” (Emphasis added). Defendant Alice Calabrese filed her Answer on October 11, 2007. (Doc. No. 48.) Therefore, Amherst may not unilaterally dismiss Defendant Calabrese from this action. If Plaintiff Amherst wishes to dismiss Defendant Calabrese from this action, it must *either* obtain a stipulation from all parties, including Defendant Donald Menefee, *or* file a motion pursuant to Rule 42(a)(2) seeking an order from this Court that adequately explains why such a dismissal would be proper. *See*

Grover by Grover v. Eli Lilly & Co., 33 F.3d 716, 718 (6th Cir. 1994) (“Whether dismissal should be granted under the authority of Rule 41(a)(2) is within the sound discretion of the district court.”)

Plaintiff Amherst’s Notice of Dismissal (Doc. No. 72) is construed as a motion and is hereby DENIED.

IT IS SO ORDERED.

/s/ Nancy A. Vecchiarelli
U.S. MAGISTRATE JUDGE

Date: February 19, 2008